

FILED

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9  
10 *Attorneys for Plaintiff*  
11 PINKBERRY, INC.  
12

13 PINKBERRY, INC., a California  
corporation,

14 Plaintiff,

15 vs.  
16 JTRA, LLC d/b/a YOBERRY, a Florida  
17 Limited Liability Company,

18 Defendant.

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CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

BY \_\_\_\_\_

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

Case No. CV08-05930 (CWk) *SVW*

**COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF FOR:**

- 1. FEDERAL TRADEMARK  
INFRINGEMENT;**
- 2. FEDERAL UNFAIR  
COMPETITION;**
- 3. FEDERAL FALSE  
DESIGNATION OF ORIGIN;**
- 4. STATE UNFAIR COMPETITION;**
- 5. STATE INJURY TO BUSINESS  
REPUTATION; AND**
- 6. UNJUST ENRICHMENT**

1 Plaintiff Pinkberry, Inc. ("Pinkberry") for its Complaint against Defendant  
2 JTRA, LLC d/b/a Yoberry ("Yoberry"), alleges as follows:

3

4 **JURISDICTION AND VENUE**

5 1. This is a complaint for injunctive relief and damages based on trademark  
6 infringement, unfair competition, and false designation of origin under 15 U.S.C.  
7 Section 1051 *et seq.*, as amended (hereinafter "Lanham Act"), as well as related state  
8 law claims.

9 2. This Court has subject matter jurisdiction over this action under the  
10 Lanham Act, 15 U.S.C. § 1121; 28 U.S.C. § 1338(a) (any act of Congress relating to  
11 patents, copyrights and trademarks); and the doctrines of ancillary and pendant  
12 jurisdiction.

13 3. This Court has personal jurisdiction over Yoberry because Yoberry  
14 purposefully availed itself of the privilege of conducting activities in California,  
15 thereby invoking the benefits and protections of its laws. Yoberry's website states  
16 that it is seeking to franchise nationally and soliciting applications from "interested  
17 franchisees" nationally, including in California. On information and belief, Yoberry's  
18 representatives also have met with at least one potential franchisee in Los Angeles,  
19 California.

20 4. Venue is proper in this district under 28 U.S.C. § 1391(b)(2) and (3)  
21 because a substantial part of the events giving rise to the claims occurred in this  
22 district, a substantial part of the property that is the subject of the action is situated in  
23 this district, and Yoberry was and is subject to personal jurisdiction in this district at  
24 the time the action was commenced.

25

26 **PARTIES**

27 5. Pinkberry is, and at all times relevant hereto has been, a corporation  
28 organized and existing under the laws of the State of California, having a place of

1 business at 6310 San Vicente Boulevard, Suite 100, Los Angeles, California 90048.  
2 Pinkberry's primary line of business is the sale of frozen yogurt with optional  
3 toppings that include, among other things, fresh fruit, cereals and nuts, as well as  
4 smoothies and shaved ice (the "Pinkberry Products") under the distinctive Pinkberry  
5 branding. Pinkberry operates stores throughout Los Angeles and elsewhere within  
6 this district as well as in interstate commerce.

7 6. On information and belief, Yoberry is, and at all times relevant hereto has  
8 been, a limited liability company, having a place of business at 1 Seminole Way, Fort  
9 Lauderdale, Florida 33314. Yoberry's primary line of business is the sale of frozen  
10 yogurt with optional toppings that include, among other things, fresh fruit, cereals and  
11 nuts, as well as smoothies and shaved ice which deliberately imitates Pinkberry's  
12 highly distinctive branding.

13

14 **SUMMARY OVERVIEW OF COMPLAINT**

15 7. Much the way that Apple Computers revolutionized the computer  
16 industry, raising the design standards and operating systems of the previously staid  
17 "beige box" computer market, Pinkberry has revolutionized the yogurt business by  
18 offering a product selection and consumer experience that are uniquely Pinkberry.  
19 Since its opening, Pinkberry has been featured in numerous national publications such  
20 as Time, Fortune, Los Angeles Times, New York Times, and Reuters, and has been  
21 the subject of countless internet blogs. See, true and correct copies of a sampling of  
22 articles discussing Pinkberry attached hereto as **Exhibit "A"** and incorporated by  
23 reference. These national publications have recognized the unique and highly  
24 distinctive look and feel of Pinkberry stores, noting, for example, that Pinkberry was  
25 responsible for "help[ing to] revive the sagging frozen yogurt industry"<sup>1</sup> and

26

27 1 Hwang & Lee, *Simple by Design*, TIME MAGAZINE, March 12, 2008.

28

1 "develop[ing] a look that helped create a cult factor."<sup>2</sup> Among many of its other  
2 acclaims and accolades, *The Los Angeles Times* has called Pinkberry "a phenomenon,  
3 creating four-times-a-week addicts and spawning celebrity devotion, along with a  
4 chorus of imitators..."<sup>3</sup> More recently, *The Los Angeles Times* opinion section made  
5 the tongue-in-cheek suggestion that the Los Angeles Coliseum should be renamed  
6 "Pinkberry Coliseum."<sup>4</sup> Indeed, Pinkberry's popularity, success, and fame in the  
7 yogurt business are unparalleled. Pinkberry was even showcased in an American  
8 Express national television advertisement. See true and correct copies of the  
9 American Express television advertisement stills, attached hereto as **Exhibit "B"** and  
10 incorporated by reference.

11 8. Pinkberry's success has been noted by its competitors and would-be  
12 competitors, including Yoberry. On information and belief, Yoberry's branding is a  
13 deliberate imitation of the Pinkberry branding and was implemented to build market  
14 share and a customer base by exploiting Pinkberry's renowned trade name and  
15 trademarks and wrongfully trade upon Pinkberry's reputation and goodwill.

16 9. Yoberry has sought to profit from Pinkberry's success by using the  
17 YOBERRY trademarks (the "YOBERRY Marks") to market and sell products that are  
18 identical to the Pinkberry Products, thereby infringing upon Pinkberry's registered  
19 trademarks, service marks, and trade name (collectively, the "PINKBERRY Marks").

20 10. Yoberry's wrongful acts create a likelihood of confusion in the minds of  
21 consumers as to the sponsorship, endorsement, association, or approval of Yoberry's  
22 products by Pinkberry. Accordingly, Pinkberry has been and continues to be damaged  
23 by Yoberry's infringing activities, thereby necessitating this lawsuit.

25 2 Boyle, *Starbucks Founder Bites Into Pinkberry*, FORTUNE, October 16, 2007.

26 3 Menn, *Welcome Jolt for Pinkberry*, LOS ANGELES TIMES, October 16, 2007.

27 4 Zirin, *The Pinkberry Coliseum*, LOS ANGELES TIMES, June 29, 2008

1                   **ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

2                   **A. Pinkberry's Creation and First Use of Its PINKBERRY Trademarks,  
3                   Service Marks, and Trade Name**

4                   11. Commencing in or about January of 2005, Pinkberry created, developed  
5                   and began marketing and selling the Pinkberry Products through its distinctive  
6                   Pinkberry restaurants.

7                   12. Since approximately January of 2005, Pinkberry has been using and is  
8                   currently using its PINKBERRY Marks in connection with the marketing and sale of  
9                   the Pinkberry Products, restaurants and related products and services. Pinkberry owns  
10                  all rights in and to the federal registrations for the following PINKBERRY Marks,  
11                  each of which is valid and subsisting:

| <u>TRADEMARK</u>                                 | <u>REG. NO.</u> | <u>ISSUE DATE</u> | <u>GOODS AND SERVICES</u>   |
|--|-----------------|-------------------|---|
| PINKBERRY  | 3,302,143       | October 2, 2007   | Frozen yogurt; frozen yogurt based dessert, combined with fruit, nuts, cereal and shaved ice and rice cakes; and smoothies  |
| PINKBERRY  | 3,460,697       | July 8, 2008      | Restaurant services; restaurants; take-out restaurant services, café-restaurants; fast-food restaurants   |
| Stylized Leaf and Berry Swirl Design             | 3,461,027       | July 8, 2008      | Express restaurant services, food kiosk services, and carry-out restaurant services featuring frozen yogurt-based desserts, frozen dairy desserts, smoothies and shaved ice |
| PINKBERRY & Stylized Leaf and Berry Swirl Design | 3,460,702       | July 8, 2008      | Restaurant services; restaurants; take-out restaurant services; café-restaurants; fast-food restaurants   |

27                  See, true and correct copies of those registrations attached hereto as Exhibits "C"  
28                  through "F" and incorporated by reference.

1       13. Since Pinkberry opened its first restaurant in the United States in or about  
2 January of 2005, its Pinkberry Products, restaurants and services have prominently  
3 featured the PINKBERRY Marks to identify them and to identify Pinkberry as their  
4 source.

5       14. Pinkberry has expended substantial time, money, and effort in promoting  
6 its Pinkberry Products, restaurants and related products and services through the use  
7 of its PINKBERRY Marks and in enforcing its rights in its PINKBERRY Marks  
8 throughout the United States.

9       15. By virtue of Pinkberry's investments, the PINKBERRY Marks have  
10 become associated in the minds of consumers and in the minds of the general public  
11 with Pinkberry and have become assets of substantial value to Pinkberry and symbols  
12 of its quality products and valuable goodwill. As a result of its efforts and success, in  
13 less than three (3) years, Pinkberry has expanded from one location in West  
14 Hollywood, California to over 60 locations in the United States, with current plans to  
15 continue to expand nationally and to enter international markets.

16       16. Since January 2005, the Pinkberry Products, restaurants and services, as  
17 identified by the PINKBERRY Marks, have been widely used and recognized in the  
18 United States. *See e.g.* Hwang & Lee, *Simple by Design*, TIME MAGAZINE, March 12,  
19 2008 (describing Pinkberry's successes) and other articles attached hereto as  
20 **Exhibit "A"** and incorporated by reference.

21

22 **B. Yoberry's Unlawful Conduct**

23       17. On information and belief, since on or about January 18, 2008, Yoberry  
24 has sold the same products as the Pinkberry Products under the confusingly similar  
25 YOBERRY Marks and using Pinkberry's photographs. *See* true and correct copies of  
26 Yoberry's imitation of the PINKBERRY Mark and use of Pinkberry's photographs  
27 attached hereto as **Exhibit "G"** and incorporated by reference. *See also* true and  
28 correct copies of Pinkberry's photographs attached hereto as **Exhibit "H"** and

1 incorporated by reference.

2       18. Yoberry's use of the YOBERRY Marks in the promotion, advertising and  
3 sale of directly competitive frozen yogurt products and services constitutes the use in  
4 commerce of a colorable imitation, copies and reproductions of the PINKBERRY  
5 Marks, is deceptively and confusingly similar to Pinkberry's use of the PINKBERRY  
6 Marks for identical products and is likely to cause confusion, mistake, or deception in  
7 the minds of the public.

8       19. Pinkberry has not consented to, sponsored, endorsed, or approved  
9 Yoberry's use of the PINKBERRY Marks or Pinkberry's photographs in connection  
10 with any of Yoberry's products or services.

11       20. Yoberry's acts of improper use and promotion of the PINKBERRY  
12 Marks are likely to cause confusion or mistake in the minds of consumers as to the  
13 sponsorship, endorsement, association, or approval of Yoberry's products and services  
14 by Pinkberry. Likelihood of confusion is and will only be exacerbated by the fact that  
15 Yoberry's products and services are directly competitive with and/or highly related to  
16 Pinkberry's products and services. Yoberry's and Pinkberry's products are likely to  
17 be purchased by the same types of consumers, advertised and promoted in the same  
18 and/or similar advertising channels, and marketed and sold in similar retail  
19 establishments.

20       21. On information and belief, the foregoing actions of Yoberry have been  
21 knowing, deliberate, willful, and in utter disregard of Pinkberry's rights.

22       22. Yoberry's unlawful activity results in irreparable harm and injury to  
23 Pinkberry. Among other harms, it deprives Pinkberry of its absolute right to  
24 determine the manner in which its image is presented to the general public through its  
25 products and services; deceives the public as to the origin and sponsorship of such  
26 products and services; wrongfully trades upon, and cashes in on, Pinkberry's  
27 reputation and exclusive rights in its trademarks; and irreparably harms and injures  
28 Pinkberry's business reputation. As a direct and proximate result of Yoberry's

1 conduct set forth above, Pinkberry has been injured and damaged in an amount to be  
2 proven.

3 23. Yoberry's conduct is continuing, and will continue, unless enjoined by  
4 the Court.

5 24. Unless Yoberry is enjoined from engaging in the infringing conduct  
6 described above, Pinkberry will suffer irreparable injury and further damage. Thus, it  
7 would be difficult to ascertain the amount of compensation which could afford  
8 Pinkberry adequate relief for the acts of Yoberry present and threatened, and  
9 Pinkberry's remedy at law is not adequate to compensate for said harm and damage.

10 **FIRST CLAIM FOR RELIEF**

11 **TRADEMARK INFRINGEMENT**

12 **UNDER 15 U.S.C. § 1114 [LANHAM ACT § 32]**

13 25. Pinkberry repeats paragraphs 1 through 24, above, and incorporates the  
14 allegations thereof as if herein set forth in their entirety.

15 26. Pinkberry has used its PINKBERRY Marks in connection with, and to  
16 identify the source of the Pinkberry Products and to distinguish those products from  
17 similar products offered by other companies, by, and without limitation, prominently  
18 displaying the PINKBERRY Marks on Pinkberry's storefronts, employees' uniforms,  
19 cups, to-go containers and bags, and advertising and promotional materials distributed  
20 throughout the United States, including, without limitation, on its website:  
21 [www.pinkberry.com](http://www.pinkberry.com).

22 27. Yoberry's use of the YOBERRY Marks in connection with advertising,  
23 promotion and sale of directly competitive products and services infringes Pinkberry's  
24 registered PINKBERRY Marks and is likely to cause confusion, mistake, or deception  
25 of the public as to the identity, source and/or sponsorship of Yoberry's products and  
26 services.

27 28. Yoberry's use of the YOBERRY Marks has been made notwithstanding

1 Pinkberry's well-known and prior-established rights in the PINKBERRY Marks and  
2 with both actual and constructive notice of Pinkberry's federal trademark registrations  
3 and rights under 15 U.S.C. § 1072.

4        29. On information and belief, Yoberry has intentionally adopted and  
5 continued to use the YOBERRY Marks with the intent of causing confusion, mistake,  
6 or deception of the public as to the identity and source of Yoberry's products and  
7 services.

8       30. The above acts by Yoberry constitute trademark infringement. By reason  
9 of the foregoing, Yoberry has violated and will continue to violate § 32(1) of the  
10 Lanham Act, 15 U.S.C. § 1114(1), unless enjoined by the Court.

11       31. Yoberry's infringing activities have caused, and unless enjoined by this  
12 Court, will continue to cause substantial, immediate, and irreparable injury and other  
13 damage to Pinkberry's business, reputation and goodwill.

14       32. Pinkberry has no adequate remedy at law unless Yoberry's infringing  
15 conduct is enjoined by this Court.

## **SECOND CLAIM FOR RELIEF**

## **UNFAIR COMPETITION**

**UNDER 15 U.S.C. § 1125(a) [LANHAM ACT § 43(a)]**

20       33. Pinkberry repeats paragraphs 1 through 32, above, and incorporates the  
21 allegations thereof as if herein set forth in their entirety.

22       34. Yoberry's improper use of the YOBERRY Marks in connection with the  
23 advertising, promotion and sale of directly competitive products and services  
24 constitutes unfair competition under 15 U.S.C. § 1125(a).

25        35. Yoberry's use of the YOBERRY Marks is likely to cause confusion,  
26 mistake, or deception among consumers as to whether Yoberry is affiliated, connected  
27 or associated with Pinkberry, and as to whether Pinkberry is the source of Yoberry's  
28 products and commercial activities or has sponsored or approved them.

36. Yoberry's unfair competition has caused and will continue to cause irreparable injury and other damage to Pinkberry's business, reputation and goodwill in its PINKBERRY Marks for which Pinkberry has no adequate remedy at law.

**THIRD CLAIM FOR RELIEF**

**FALSE DESIGNATION OF ORIGIN**

**UNDER 15 U.S.C. § 1125(a) [LANHAM ACT § 43(a)]**

37. Pinkberry repeats paragraphs 1 through 36, above, and incorporates the allegations thereof as if herein set forth in their entirety.

38. Yoberry's YOBERRY Marks are such colorable imitations and copies of the PINKBERRY Marks that Yoberry's use thereof in connection with directly competitive products and services is likely to cause confusion, mistake, or deception as to whether Yoberry is affiliated, connected, or associated with Pinkberry, and as to whether Pinkberry is the source of Yoberry's products, services, or commercial activities or has sponsored or approved them.

39. Yoberry's use of the YOBERRY Marks is a false designation of the origin of Yoberry's products, services or commercial activities and/or a false or misleading representation concerning such products, services or commercial activities under 15 U.S.C. § 1125(a).

40. As a direct and proximate result of the violations identified herein, Pinkberry has been injured in its business and property. Pinkberry has suffered damages in excess of the jurisdictional minimum of this Court in an amount to be proven at trial.

**FOURTH CLAIM FOR RELIEF**  
**UNFAIR COMPETITION**  
**CALIFORNIA BUSINESS AND PROFESSIONS CODE**  
**§ 17200 *et seq.***

41. Pinkberry repeats paragraphs 1 through 40, above, and incorporates the allegations thereof as if herein set forth in their entirety.

42. Yoberry's use of YOBERRY Marks and its use of Pinkberry's photographs, in connection with the advertising, promotion and sale of Yoberry's products in direct competition with the Pinkberry Products constitute unfair competition.

43. Pursuant to California Business and Professions Code § 17203, Pinkberry is entitled to preliminary and permanent injunctive relief ordering Yoberry to cease this unfair competition, as well as disgorgement of all of Yoberry's profits associated with this unfair competition.

**FIFTH CLAIM FOR RELIEF**  
**INJURY TO BUSINESS REPUTATION**  
**CALIFORNIA COMMON LAW**

44. Pinkberry repeats paragraphs 1 through 43, above, and incorporates the allegations thereof as if herein set forth in their entirety.

45. Yoberry's use of the YOBERRY Marks injures and creates likelihood of injury to Pinkberry's business reputation because persons encountering Yoberry's products and services will be misled into believing that Pinkberry is affiliated with or related to Yoberry, and any adverse reaction by the public to Yoberry, the quality of Yoberry's products, or the nature of its business will injure the business reputation of Pinkberry and the goodwill that Pinkberry has enjoyed and enjoys in connection with its PINKBERRY Marks.

**SIXTH CLAIM FOR RELIEF**  
**UNJUST ENRICHMENT**

46. Pinkberry repeats paragraphs 1 through 45 above, and incorporates by reference the allegations thereof as if herein set forth in their entirety.

1       47. As a result of the conduct of Yoberry, Yoberry has been unjustly  
2 enriched at the expense of Pinkberry and the law thereby implies a contract by which  
3 Yoberry must pay to Pinkberry the amount by which, in equity and good conscience,  
4 Yoberry has been unjustly enriched at Pinkberry's expense.

5

6       **WHEREFORE**, Pinkberry seeks judgment against Yoberry as follows:

7       1. That Yoberry and its agents, officers, servants, employees,  
8 representatives, licensees, franchisees, successors, assigns, attorneys and all other  
9 persons who are acting in concert or participation with any of them, and each of them,  
10 be preliminarily and permanently enjoined from any further use of the YOBERRY  
11 Marks or any other trademark, trade name or other designation that is confusingly  
12 similar to the PINKBERRY Marks;

13       2. That Yoberry and its agents, officers, servants, employees,  
14 representatives, licensees, franchisees, successors, assigns, attorneys and all other  
15 persons who are acting in concert or participation with any of them, and each of them,  
16 be preliminarily and permanently enjoined from any further acts of unfair competition  
17 against Pinkberry;

18       3. That Yoberry be required to file with the Court and serve on Pinkberry  
19 within thirty (30) days after entry of the injunction, a declaration under oath setting  
20 forth in detail the manner and form in which Yoberry has complied with the  
21 injunctions;

22       4. That, pursuant to 15 U.S.C. § 1117, Yoberry be held liable for all  
23 damages suffered by Pinkberry resulting from the acts alleged herein;

24       5. That Pinkberry receive an award in the amount by which Yoberry has  
25 been unjustly enriched;

26       6. That, pursuant to 15 U.S.C. § 1117, Yoberry be compelled to account to  
27 Pinkberry for any and all profits derived by Yoberry from its illegal acts complained  
28 of herein;

7. That, pursuant to California Business and Professions Code § 17203, Yoberry be compelled to pay restitution and disgorge its ill-gotten gains;

8. That Yoberry be ordered pursuant to 15 U.S.C. § 1118 to deliver up for destruction all labels, signs, prints, packages, wrappers, receptacles, advertisement, menus, banners, or the like in possession or custody, or under the control of either Yoberry bearing any of the YOBERRY Marks; and

9. That the Court declare this action to be an exceptional case and award Pinkberry its full costs and reasonable attorneys' fees pursuant to 15 U.S.C. § 1117;

10. That the Court grant Pinkberry any other remedy to which it may be entitled as provided for in 15 U.S.C. §§ 1116 and 1117 and/or under state law; and

11. For such other and further relief that the Court deems just and proper.

DATED: September 10, 2008

REED SMITH LLP

B

Henry C. Wang  
*Attorneys for Plaintiff*  
**PINKBERRY, INC.**

DOCSLA-15650178

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET**

|   |  |  |  |  |  |  |  |   |   |   |   |                |   |
|---|--|--|--|--|--|--|--|---|---|---|---|----------------|---|
| <p><b>I (a) PLAINTIFFS</b> (Check box if you are representing yourself <input type="checkbox"/> )<br/> <b>PINKBERRY, INC., a California corporation</b></p>   | <p><b>DEFENDANTS</b><br/> <b>JTRA, LLC d/b/a YOBERRY, a Florida Limited Liability Company</b></p>  |  |  |  |  |  |  |   |   |   |   |                |   |
| <p><b>(b) County of Residence of First Listed Plaintiff (Except in U.S. Plaintiff Cases): LOS Angeles, California</b></p>   | <p>County of Residence of First Listed Defendant (In U.S. Plaintiff Cases Only): <b>Fort Lauderdale, Florida</b></p>   |  |  |  |  |  |  |   |   |   |   |                |   |
| <p><b>(c) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)</b><br/> <b>Henry C. Wang (SBN 196537)</b><br/> <b>William R. Overend (SBN 180209)</b><br/> <b>Michael A. Garabed (SBN 223511)</b><br/> <b>REED SMITH LLP</b><br/> <b>355 South Grand Avenue, Suite 2900</b><br/> <b>Los Angeles, CA 90071-1514</b></p>  | <p>Attorneys (If Known)</p>  |  |  |  |  |  |  |   |   |   |   |                |   |
| <p><b>II. BASIS OF JURISDICTION</b> (Place an X in one box only.)</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;"><input type="checkbox"/> 1 U.S. Government Plaintiff</td> <td style="width: 25%;"><input checked="" type="checkbox"/> 3 Federal Question<br/>(U.S. Government Not a Party)</td> <td style="width: 25%;"><input type="checkbox"/> 5 Transferred from another district<br/>(specify):</td> <td style="width: 25%;"><input type="checkbox"/> 6 Multi-District Litigation</td> </tr> <tr> <td><input type="checkbox"/> 2 U.S. Government Defendant</td> <td><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</td> <td><input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge</td> <td></td> </tr> </table>  |  | <input type="checkbox"/> 1 U.S. Government Plaintiff   | <input checked="" type="checkbox"/> 3 Federal Question<br>(U.S. Government Not a Party)  | <input type="checkbox"/> 5 Transferred from another district<br>(specify):   | <input type="checkbox"/> 6 Multi-District Litigation   | <input type="checkbox"/> 2 U.S. Government Defendant   | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)   | <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge |   |   |   |                |   |
| <input type="checkbox"/> 1 U.S. Government Plaintiff  | <input checked="" type="checkbox"/> 3 Federal Question<br>(U.S. Government Not a Party)  | <input type="checkbox"/> 5 Transferred from another district<br>(specify):   | <input type="checkbox"/> 6 Multi-District Litigation   |  |  |  |  |   |   |   |   |                |   |
| <input type="checkbox"/> 2 U.S. Government Defendant  | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)   | <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge  |  |  |  |  |  |   |   |   |   |                |   |
| <p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> - For Diversity Cases Only<br/>(Place an X in one box for plaintiff and one for defendant.)</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;">Citizen of This State</td> <td style="width: 25%; text-align: center;"><input type="checkbox"/> PTF      <input type="checkbox"/> DEF</td> <td style="width: 25%; text-align: center;">Incorporated or Principal Place of Business in this State</td> <td style="width: 25%; text-align: center;"><input type="checkbox"/> PTF      <input type="checkbox"/> DEF</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 1      <input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5      <input type="checkbox"/> 6</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3      <input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6      <input type="checkbox"/> 6</td> </tr> </table>   |  | Citizen of This State  | <input type="checkbox"/> PTF <input type="checkbox"/> DEF  | Incorporated or Principal Place of Business in this State  | <input type="checkbox"/> PTF <input type="checkbox"/> DEF  | Citizen of Another State   | <input type="checkbox"/> 1 <input type="checkbox"/> 2  | Incorporated and Principal Place of Business in Another State             | <input type="checkbox"/> 5 <input type="checkbox"/> 6 | Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |
| Citizen of This State   | <input type="checkbox"/> PTF <input type="checkbox"/> DEF  | Incorporated or Principal Place of Business in this State  | <input type="checkbox"/> PTF <input type="checkbox"/> DEF  |  |  |  |  |   |   |   |   |                |   |
| Citizen of Another State  | <input type="checkbox"/> 1 <input type="checkbox"/> 2  | Incorporated and Principal Place of Business in Another State  | <input type="checkbox"/> 5 <input type="checkbox"/> 6  |  |  |  |  |   |   |   |   |                |   |
| Citizen or Subject of a Foreign Country   | <input type="checkbox"/> 3 <input type="checkbox"/> 3  | Foreign Nation   | <input type="checkbox"/> 6 <input type="checkbox"/> 6  |  |  |  |  |   |   |   |   |                |   |
| <p><b>IV. ORIGIN</b> (Place an X in one box only.)</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;"><input checked="" type="checkbox"/> 1 Original Proceeding</td> <td style="width: 25%;"><input type="checkbox"/> 2 Removed from State Court</td> <td style="width: 25%;"><input type="checkbox"/> 3 Remanded from Appellate Court</td> <td style="width: 25%;"><input type="checkbox"/> 4 Reinstated or Reopened</td> </tr> </table>   |  | <input checked="" type="checkbox"/> 1 Original Proceeding  | <input type="checkbox"/> 2 Removed from State Court  | <input type="checkbox"/> 3 Remanded from Appellate Court   | <input type="checkbox"/> 4 Reinstated or Reopened  |  |  |   |   |   |   |                |   |
| <input checked="" type="checkbox"/> 1 Original Proceeding   | <input type="checkbox"/> 2 Removed from State Court  | <input type="checkbox"/> 3 Remanded from Appellate Court   | <input type="checkbox"/> 4 Reinstated or Reopened  |  |  |  |  |   |   |   |   |                |   |
| <p><b>V. REQUESTED IN COMPLAINT: JURY DEMAND:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (Check 'Yes' only if demanded in complaint.)</p>  |  |  |  |  |  |  |  |   |   |   |   |                |   |
| <p><b>CLASS ACTION under F.R.C.P. 23:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <b>MONEY DEMANDED IN COMPLAINT: \$ &gt;\$75,000</b></p>   |  |  |  |  |  |  |  |   |   |   |   |                |   |
| <p><b>VI. CAUSE OF ACTION</b> (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)<br/> <b>Federal Trademark Infringement (15 U.S.C. 1114); Federal Unfair Competition (15 U.S.C. 1125(a)); Federal False Designation of Origin (15 U.S.C. 1125(a)); State Unfair Competition (Cal. Bus. &amp; Prof 17200); State Injury to Business Reputation; and Unjust Enrichment</b></p>  |  |  |  |  |  |  |  |   |   |   |   |                |   |
| <p><b>VII. NATURE OF SUIT (Place an X in one box only.)</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%; padding: 5px;"> <b>OTHER STATUTES</b><br/> <input type="checkbox"/> 400 State Reapportionment<br/> <input type="checkbox"/> 410 Antitrust<br/> <input type="checkbox"/> 430 Banks and Banking<br/> <input type="checkbox"/> 450 Commerce/ICC Rates/etc.<br/> <input type="checkbox"/> 460 Deportation<br/> <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations<br/> <input type="checkbox"/> 480 Consumer Credit<br/> <input type="checkbox"/> 490 Cable/Sat TV<br/> <input type="checkbox"/> 810 Selective Service<br/> <input type="checkbox"/> 850 Securities/Commodities/ Exchange<br/> <input type="checkbox"/> 875 Customer Challenge 12 USC 3410<br/> <input type="checkbox"/> 890 Other Statutory Actions<br/> <input type="checkbox"/> 891 Agricultural Act<br/> <input type="checkbox"/> 892 Economic Stabilization Act<br/> <input type="checkbox"/> 893 Environmental Matters<br/> <input type="checkbox"/> 894 Energy Allocation Act<br/> <input type="checkbox"/> 895 Freedom of Info. 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| <p><b>VIII(a). IDENTICAL CASES:</b> Has this action been previously filed and dismissed, remanded or closed? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes<br/>         If yes, list case number(s):</p>  |  |  |  |  |  |  |  |   |   |   |   |                |   |

**CV08-05930**

FOR OFFICE USE ONLY: Case Number:

CIVIL COVER SHEET

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET**

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**VIII(b). RELATED CASES:** Have any cases been previously filed that are related to the present case?  No  Yes

If yes, list case number(s): \_\_\_\_\_

**Civil cases are deemed related if a previously filed case and the present case:**

- (Check all boxes that apply)
- A. Arise from the same or closely related transactions, happenings, or events; or
  - B. Call for determination of the same or substantially related or similar questions of law and fact; or
  - C. For other reasons would entail substantial duplication of labor if heard by different judges; or
  - D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

**IX. VENUE:** List the California County, or State if other than California, in which **EACH** named plaintiff resides (Use an additional sheet if necessary)

Check here if the U.S. government, its agencies or employees is a named plaintiff.

Los Angeles

List the California County, or State if other than California, in which **EACH** named defendant resides. (Use an additional sheet if necessary).

Check here if the U.S. government, its agencies or employees is a named defendant.

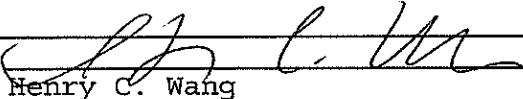
Florida

List the California County, or State if other than California, in which **EACH** claim arose. (Use an additional sheet if necessary)

**Note:** In land condemnation cases, use the location of the tract of land involved.

Los Angeles

**X. SIGNATURE OF ATTORNEY (OR PRO PER):**

  
Henry C. Wang

Date September 10 2008

**Notice to Counsel/Parties:** The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

| Nature of Suit Code | Abbreviation | Substantive Statement of Cause of Action   |
|---------------------|--------------|--|
| 861                 | HIA          | All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b)) |
| 862                 | BL           | All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)  |
| 863                 | DIWC         | All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))   |
| 863                 | DIWW         | All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))  |
| 864                 | SSID         | All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.  |
| 865                 | RSI          | All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))   |

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY**

This case has been assigned to District Judge Stephen V. Wilson and the assigned discovery Magistrate Judge is Carla Woehrle.

The case number on all documents filed with the Court should read as follows:

**CV08- 5930 SVW (CWx)**

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

**NOTICE TO COUNSEL**

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:

**Western Division**  
312 N. Spring St., Rm. G-8  
Los Angeles, CA 90012

**Southern Division**  
411 West Fourth St., Rm. 1-053  
Santa Ana, CA 92701-4516

**Eastern Division**  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.